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OFFICE OF THE SECRETARY

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments of the Office of the Commissioner
of Baseball
Inquiry Into Sports Programming Migration
PP Docket No. 93-21

Dear Ms. Searcy:

Please find attached on behalf of the Office of
the Commissioner of Baseball an original and 11 copies
of the Comments of the Office of the Commissioner of
Baseball filed in the above-referenced proceeding.

Any questions regarding the submission should be
referred to the undersigned.

Sincerely,



Bruce A. Henoch

Attachment

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
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Implementation of Section 26 of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)
)

Inquiry into Sports Programming)
Migration)
)

PP Docket No. 93-21

TO: The Commission

COMMENTS OF
THE OFFICE OF THE
COMMISSIONER OF BASEBALL

Robert Alan Garrett
Bruce A. Henoch
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SUMMARY

Since 1980 there has been a steady growth in the availability of Baseball telecasts on over-the-air broadcast television. The number of Baseball telecasts presented by local "flagship stations" has increased from 1392 in 1980 to 1705 in 1993. Likewise, the number of stations that rebroadcast the flagships' Baseball telecasts has increased from 110 in 1979 to 185 in 1992.

Cable and other subscription services also are televising more Baseball than at any time in the past. However, these services have supplemented, rather than supplanted, broadcast coverage of Baseball; they have televised games that otherwise would not have been

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TO: The Commission

COMMENTS OF
THE OFFICE OF THE
COMMISSIONER OF BASEBALL

The Office of the Commissioner of Baseball ("Baseball") submits the following comments in response to the Commission's Notice of Inquiry, FCC 93-77 (released February 9, 1993) ("Notice").

BACKGROUND

Section 26(a) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") requires the Commission to study the carriage of sports programming. The purpose of the study is to investigate and to analyze "trends in the migration" of sports programming from broadcast to nonbroadcast services. Section 26(b) of the 1992 Cable Act requires

the Commission to submit to Congress by July 1, 1994 a final report on the results of the sports migration study; an interim report is due July 1, 1993. These reports must include "such legislative or regulatory recommendations as the Commission considers appropriate."

In its Notice the Commission has requested Baseball and other interested parties to provide certain data and information concerning "migration," which the Commission has defined as "the movement of sports programming from broadcast television to a subscription medium (i.e., one for which viewers pay a fee)." Notice at ¶ 2. The purpose of the following Comments is to respond to questions posed by the Commission. As the Comments demonstrate, the hyperbolic claims about the migration of Baseball telecasts are unsupported by the facts.

More than fifteen years ago the Commission responded to similar claims by adopting a set of restrictive anti-siphoning rules which would have limited the ability of sports clubs to provide programming to cable services. Those rules were struck down by the court as violative of the First Amendment and the Administrative Procedures Act. See Home Box Office, Inc. v. FCC, 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977). The D.C. Circuit warned



that "prior restraints on speech are heavily disfavored and can be sustained only where the proponent of the restraint can convincingly demonstrate a need." Id. at 51.

Baseball's experience has confirmed that there remains no need for anti-siphoning rules. Indeed, during the upcoming 1993 season, Baseball clubs will present a total of 1,705 local over-the-air broadcasts-- 313 more broadcasts than were presented in 1980 (the base year that the Commission has selected in its Notice). During the same period, the number of broadcast stations which televise Baseball games as part of the clubs' regional networks has increased by more than 68 percent.

It is true that cable services are now televising more Baseball games than they were in 1980. Increasing the viewing options of Baseball fans in this manner is a positive, pro-consumer development that should not be discouraged or restricted by the government. Moreover, the increased availability of programming has been accomplished without diminution in the overall level of Baseball telecasts on broadcast television. As the Commission itself has recognized, an "increase in the number of games exhibited via subscription media of an individual team or league would not, by itself,

During the upcoming 1993 season conventional over-the-air broadcast stations will televise Baseball games on a local, regional and national basis. Each Baseball club arranges to televise a portion of its regular season games locally on a "flagship" station. In the majority of cases, the club licenses telecasting rights to the flagship, which produces the telecasts and pays the club a licensing fee (either a specified negotiated amount or a percentage of revenues derived by the flagship). Some clubs purchase time on the flagship stations and arrange for the production of the telecasts themselves. A number of the clubs have regional networks consisting of stations which rebroadcast the flagships' game telecasts. In addition, a number of regular season games, as well as the All Star Game and all post-season play, are broadcast nationally over the CBS Television Network.

Cable systems and other "subscription services" also will offer regular season Baseball telecasts 1) by retransmitting "negotiated" and other flagships which



A. Local Over-The-Air Flagships

(1). Each of the 26 U.S. Baseball clubs presents telecasts of its games over a broadcast station licensed to the community in which that club plays its home games ("flagship station"). A complete listing of the clubs' 1993 flagship stations is attached as Exhibit B. Baseball clubs typically enter into broadcast contracts that have terms of between 3 and 5 years. As requested by the Commission, the year in which each of the current flagship contracts expires is also identified in Exhibit B.

Contrary to popular belief, there has been a significant increase in the total number of broadcasts of Baseball games by the flagship stations since 1980:

Table 1
Baseball Flagship Station
Broadcasts (1980-93)

1980	1392
1985	1461
1990	1552
1993*	1584
1993**	1705

* Does not include two expansion clubs

** Does include expansion clubs

As Table 1 illustrates, the 26 U.S. Baseball clubs will present a total of 1,705 broadcasts in the upcoming 1993 season. Thus, an average of 65 (or 40

percent) of the 162 games to be played by each club will be broadcast over the club's flagship station. The total number of flagship broadcasts that will be presented in 1993 by the 24 U.S. Baseball clubs that operated in 1980 is 1,584. The same 24 clubs presented 1,392 broadcasts of their games in 1980; each club broadcast an average of 36 percent of its games in 1980. Consequently, between 1980 and 1993 the total number of flagship station broadcasts of Baseball games has increased by approximately 22 percent (or 13 percent if one does not account for the telecasts of the two expansion teams).

(2). Local over-the-air telecasts have been and will continue to be used by Baseball as an important means of stimulating fan interest in the game of Baseball and in the hometown team. Baseball has relied upon the type of widespread exposure which broadcast television affords in order to maintain the necessary fan support. That support is a critical element in promoting attendance at Baseball games.

Nevertheless, there are external limitations on the number of telecasts that Baseball clubs may present on local broadcast stations. For example, stations affiliated with one of the national broadcast networks generally have less interest in televising Baseball because of their commitments to televise

as a result of the investigation of the matter.

telecasting home games on broadcast television reduces gate receipts. Two clubs (the Cubs and Braves, which are commonly-owned with their flagship stations) do televise a number of home games over their flagships. However, the remaining 24 U.S. clubs, on average, will broadcast only 12 of their 81 home games in 1993. See Exhibit C. That number has remained relatively constant since 1980. Because of the importance of gate receipts, most clubs will likely continue their practice of broadcasting only a small portion of their home games.⁴

(3). In its Notice the Commission identified the New York Yankees' telecasting arrangements as an example of migration. Notice at ¶ 16. It is the case that the number of Yankees' over-the-air broadcasts has decreased since 1980. In 1980 the Yankees broadcast 100 games over WPIX; in 1993 the Yankees will present 50 telecasts over WPIX (approximately the same number that

[Footnote continued from previous page]
Investigations of the Committee on Commerce, 93rd Cong., 1st Sess. (1973); TV Blackout--Professional Sports, S.Rep. No. 93-347, 93rd Cong., 1st Sess. (1973).

⁴ Obviously, the financial health of broadcast stations also is an important factor that influences the amount of Baseball on broadcast television. The retransmission consent provisions of Section 6 of the 1992 Cable Act should have the effect of increasing the financial viability of broadcast stations. To the extent that Baseball clubs share in retransmission consent revenues, their incentives to place games on broadcast television will likely be enhanced.

they have broadcast during each of the past two seasons).

The level of Yankees' 1993 telecasts is comparable to that of approximately half of the U.S. Baseball clubs. Twelve of the 26 U.S. clubs will

Exhibit illustrates, 20 of the 24 Baseball clubs had regional networks in 1992 that ranged in size from one to 27 broadcast stations.

Collectively, the 24 U.S. Baseball clubs had 185 regional broadcast affiliates in 1992 (in addition to their 24 flagship stations). The comparable number in 1979 was 110 (data on the 1980 regional networks are not available). Thus, between 1979 and 1992 Baseball's total number of regional network stations grew by approximately 68 percent:

Table 2
Baseball Regional Broadcast
Network Stations (1979 and 1992)

1979	110
1992	185

This growth in the number of regional affiliates has also increased the availability of Baseball games on broadcast television. The 185 regional affiliates in fact reached approximately 90 percent of the households in the 48 contiguous states in 1992.

(2). All of the flagship stations' broadcasts are typically offered to the regional network affiliates. Most affiliates, however, choose not to televise all of the available games. There are several factors that may enter into a broadcaster's decision not to air all of the games that Baseball makes available for broadcast. As noted above, one factor is the

station's commitment to broadcast national network programming and syndicated programming. In Baseball's experience, however, one of the most significant factors is the availability of a large number of Baseball

The most prominent of the superstations -- WTBS, WGN and WWOR -- currently reach some 57 million, 38 million, and 13 million households, respectively. Cablevision, Feb. 8, 1993, at 42. At the end of 1980, the comparable numbers were 12 million (WTBS), 5.4 million (WGN), and 3.3 million (WWOR). Cablevision, April 20, 1981, at 22. Cable systems typically carry at least two of the seven superstations with about 300 Baseball telecasts.

In its local market, a superstation is a conventional over-the-air broadcast station. "With respect to their out-of-market retransmission to home satellite dishes and via cable systems, superstations are subscription services." Notice at ¶ 6, n.13. Superstations are retransmitted by cable systems pursuant to the compulsory licensing provisions of Section 111 of the Copyright Act, 17 U.S.C. § 111. Satellite carriers distribute superstations to home satellite dishes ("HSD") owners pursuant to the compulsory licensing provisions in Section 119 of the Copyright Act, 17 U.S.C. § 119.⁶

Satellite carriers pay copyright owners 14.5 cents per subscriber per month to retransmit

⁶ The Section 119 compulsory license is scheduled to sunset on December 31, 1994. However, a bill (H.R. 1103) has been introduced to extend the compulsory license indefinitely.

superstations (17 cents if the superstation is not subject to syndicated exclusivity). See Satellite Carrier Rate Adjustment Proceeding, 57 Fed. Reg. 19052 (May 1, 1992). Individual superstations are sold to HSD owners at a monthly fee of between 95 cents and \$1.25, or as part of packages. See, e.g., Satellite Orbit, February 1993, at B13. Cable systems offer superstations as part of their basic or expanded basic service.

(2). Baseball clubs grant flagship and regional network stations the exclusive right to televise particular games over-the-air. Cable systems and satellite carriers, however, have the ability to frustrate that grant of exclusivity by importing superstation or other distant signal telecasts of the same games. In 1991 Baseball filed a petition requesting the Commission to rule that the network nonduplication rules preclude cable systems from importing the telecasts of games licensed to a local broadcast station. The Commission, however, denied Baseball's petition. See Memorandum Opinion and Order in Docket No. CSR-3441, 6 FCC Rcd 5573 (1991).

In that proceeding several broadcasters explained to the Commission that the lack of exclusivity protection from superstation Baseball telecasts significantly decreased their interest in broadcasting

Baseball. This view was expressed by CBS and the trade association representing stations affiliated with all of the major networks. It also was expressed by several stations which were broadcasting Baseball at that time, but have since discontinued such broadcasts.⁷ The FCC's own policies under the cable compulsory license have thus contributed to the lack of interest on the part of some broadcasters to televise Baseball games.

D. National Broadcast Network

and ABC combined to present 42 national broadcasts of regular season games on Saturday afternoons and Monday nights. As the following table illustrates, this number has steadily decreased since 1980:

Table 4
National Over-the-Air
Broadcasts (1980-1993)

1980	42 (ABC & NBC)
1985	40 (ABC & NBC)
1989	37 (ABC & NBC)
1993	16 (CBS)

Baseball believes it is important to exhibit games to national audiences on broadcast television. However, the ability of Baseball to broadcast games nationwide is limited by the willingness of the networks to carry such games.

Over the past decade, ratings for nationwide network Baseball telecasts have steadily declined -- both for Saturday afternoon and Monday prime time telecasts.⁸ Ratings have continued to decline for the telecasts of regular season and post season games as broadcast by CBS.⁹ On the basis of such ratings

⁸ Ratings for Saturday afternoon games broadcast on NBC from 1983-1989 fell from a high of 6.1 in 1984 to 5.0 in 1989. ABC's broadcast of prime time games posted a 10.0 rating in 1984, which fell to 8.1 in 1988.

⁹ During the initial year of the CBS national contract (1990), average ratings for Saturday afternoon games were 4.7. This average rating fell to 3.4 in 1992. Post-season ratings have fallen as well. The rating for the 1990 All-Star Game was 18.5, which fell to 14.9 for the

[Footnote continued on next page]

declines, the networks have concluded that it has become economically less viable to maintain their historic levels of Baseball telecasting.

E. Local and Regional Cable Networks

(1). Cable systems may offer their subscribers the games of local teams by carrying regional sports networks ("RSN"), which are generally available via satellite in broad geographic areas. The number of RSNs has grown significantly during the past decade. In 1980 RSNs were available to fewer than 2.5 million subscribers. As of September 1992, there were nearly 37 RSNs available to approximately 40 million subscribers. Kagan, Media Sports Business, Oct. 29, 1992, at 2. According to one survey, approximately 59 percent of cable systems offer RSNs as part of a basic tier; 32 percent of cable systems offer RSNs on "expanded basic"; and the remaining 9 percent offer RSNs as a premium channel. Cablevision, June 29, 1992, at 50-51.¹⁰

[Footnote continued from previous page]

1992 match-up. Prime time broadcast of the League Championship Series claimed a 13.5 rating in 1990, but only a 12.7 rating in 1992. Ratings for the World Series have remained fairly steady, with a 20.7 in 1990, a 24.0 for the exciting 7-game series between the Braves and Twins in 1991, and a 20.2 in 1992.

¹⁰ Three clubs, the Twins, Padres and Reds, will offer Baseball games on a package basis in 1993. These clubs market the games in various configurations, including

[Footnote continued on next page]

The growth in RSNs, which offer the public the opportunity to view a wide variety of sports programming, has been attributable in large part to the availability of Baseball games not broadcast by over-the-air television. In 1981 (the earliest year for which Baseball has complete data), RSNs carried a total of 215 Baseball telecasts. During the 1993 season 20 of the 26 U.S. Baseball clubs will present a total of 1,206 telecasts over RSNs.

Table 5
Baseball Telecasts on Cable
Regional Sports Networks (1981-1993)*

1981	215
1985	740
1990	1103
1992	1157
1993	1206

* These numbers represent 24 U.S. clubs through 1992, and 26 U.S. clubs in 1993.

Exhibit E identifies each of the RSNs that will televise Baseball in 1993. It also provides information concerning the number of telecasts to be presented as well as the expiration of the current contract with the RSN.

[Footnote continued from previous page]
part- and full-season packages. Several teams, including the Dodgers in 1992 and the Phillies in 1991, either contemplated or attempted similar marketing of games. However, these ventures were short-lived, and only the three teams listed here currently offer this type of service.

(2). As discussed above, the growth in Baseball telecasts over RSNs has not come at the expense of over-the-air broadcasts. While the total number of telecasts over RSNs has increased, so too has the total number of broadcasts over flagships. RSNs generally have served as an outlet for Baseball games that were not previously being televised (particularly home games or games beyond the number in which flagship stations were interested in televising).

(3). The Commission has sought comment on whether the criteria in the former anti-siphoning rules should be incorporated into its definition of siphoning. Notice at ¶ 8, n.16. These criteria are not an appropriate measure of migration and do not further any recognizable public interest. Indeed, had the anti-siphoning rules not been struck down, the American public would likely have been deprived of the ability to view a number of Baseball games during the past decade.

For example, in 1992 the Orioles televised 50 games over their flagship WMAR (Baltimore, MD) and 87 games over their RSN, Home Team Sports ("HTS"). If the former anti-siphoning rules had been in effect, they would have precluded the Orioles from televising more than 56 games on HTS -- or 31 fewer games than were telecast. These 31 games would not have been available at all to the public; WMAR, an NBC affiliate, has

consistently televised 50 games each season since prior to the Orioles entering into a contract with HTS. Clearly, no public interest purpose would be served by having deprived Orioles fans of the option to view Orioles games that would not otherwise have been televised.

F. National Cable Network

(1). The national cablecasting of Baseball originated in 1980, when the USA Network presented approximately 40 baseball telecasts during each of the 1980, 1981, 1982 and 1983 seasons. From 1983 to 1989 there were no national cable telecasts of Baseball games. In 1989 Baseball entered into a landmark telecasting arrangement with ESPN. That arrangement, which covers the 1990-93 seasons, was intended to increase substantially the viewing options available to Baseball fans across the country.

From the standpoint of the fan, the ESPN contract has been an enormous success. ESPN has made available to the American public more than 150 Baseball telecasts during each of the 1990, 1991 and 1992 seasons. As required by contract, those telecasts have provided balanced national exposure to all Baseball teams. This allows fans to watch teams that they might not otherwise have available, and allows fans who live in remote areas

to receive a steady supply of Baseball telecasts during the season.

In addition, ESPN has presented more than 4,000 electronic cut-ins and studio updates each season. Fans have thus been able to witness some of the most significant Baseball moments live or shortly after they occurred, such as --

-- Nolan Ryan throwing a seventh career no-hitter, at the age of 44;

-- Rickey Henderson breaking Lou Brock's record for career stolen bases;

-- Jaime Navarro and Brian Holman attempting to pitch perfect games;

-- Bobby Thigpen setting a record with his 47th save of the season; and

-- Robin Yount getting his 3,000th hit.

To this list might be added a number of other highlights including triple plays, inside-the-park home runs, grand slams and the first hit in the new Oriole Park at Camden Yards -- highlights that previously would not have been enjoyed by nationwide audiences simultaneously or nearly simultaneously with their occurrence. In addition, as required by its contract with Baseball, ESPN has presented a daily program devoted exclusively to reporting Baseball events.

Baseball chose ESPN in large part because of the network's widespread availability. ESPN currently reaches more than 61 million of the nation's 93 million